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APPLE INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 MPH Technologies Oy,
19 Plaintiff,
20 v.
21 Apple Inc.,
22 Defendant.
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Case No. 3:18-cv-05935-TLT

**DEFENDANT APPLE INC.'S
OBJECTIONS AND RESPONSES
TO PLAINTIFF MPH
TECHNOLOGIES OY'S FIRST
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
AND THINGS (NOS. 1-98)**

1 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Northern District
2 of California Local Patent Rules, and any applicable local procedures, laws, or Court orders,
3 Defendant Apple Inc. responds to Plaintiff MPH Technologies Oy's ("MPH") First Set of
4 Requests for Production (Nos. 1-98) ("Requests"):

5 **PRELIMINARY STATEMENT**

6 Apple's objections and responses to these Requests for Production are based on the facts
7 and information presently known and available to Apple. Statements below that Apple will
8 produce responsive documents that it locates pursuant to a reasonable search do not imply that
9 such documents exist. Discovery has recently begun and consequently, Apple may not have
10 identified all information responsive to the Requests at this time. As discovery in this action
11 proceeds, Apple may discover additional or different information or documents. Apple reserves
12 the right to later supplement or amend its answers and responses to these Requests throughout its
13 investigation pursuant to Federal Rule of Civil Procedure 26(e). Apple responds to the Requests
14 as it interprets and understands them. Apple reserves its right to supplement its responses if MPH
15 subsequently asserts an interpretation of any Request that differs from Apple's current
16 understanding.

17 Apple does not waive its right to object to the admissibility into evidence of any
18 information provided in response to MPH's Requests. Apple further does not waive the right to
19 raise all questions of authenticity, relevancy, materiality, and privilege for any purpose with
20 regard to the information provided in response to MPH's Requests, which may arise in any
21 subsequent proceeding and/or the trial of this or any other action. Moreover, the assertion by
22 Apple of various general and specific objections is not a waiver of other objections that might be
23 applicable or become so at some future time. Apple's responses are based on a search of
24 electronically stored information and physical documents as they are maintained in the normal
25 course of business. Apple will not search for or produce email outside of the procedures set forth
26 in the Parties' agreed-upon ESI order, which provides that "[g]eneral ESI production requests
27 under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms of
28 electronic correspondence." Apple will produce documents on a rolling basis.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

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2 1. Apple objects to the definition of “Defendant,” “Apple,” “You,” and “Your” as
3 overbroad, unduly burdensome, and seeking information that is irrelevant to, and not proportional
4 to the needs of, this case, to the extent they purport to refer to information about Apple personnel
5 who have no connection to the technology accused in MPH’s complaint or infringement
6 contentions, exceeding the scope and proportionality limitations of Federal Rule of Civil
7 Procedure 26(b)(1). In responding to the Requests, Apple interprets “Defendant,” “Apple,”
8 “You,” and “Your” to mean Apple Inc.

9 2. Apple objects to the definitions of “Document(s)” and “Thing(s)” to the extent
10 they are broader than the definitions provided by Federal Rule of Civil Procedure 34(a). Apple
11 further objects to the definition of “Document” to the extent it includes email or other forms of
12 electronic correspondence. Apple will not search for or produce email outside of the procedures
13 set forth in the Parties’ agreed-upon ESI order, which provides that “[g]eneral ESI production
14 requests under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms
15 of electronic correspondence.”

16 3. Apple objects to the definition of “Electronic data compilation” to the extent it
17 imposes on Apple a greater obligation than that which is required under the Federal Rules of Civil
18 Procedure and procedures set forth in the Parties’ agreed-upon ESI order.

19 4. Apple objects to the definition of “Communication” to the extent it imposes on
20 Apple a greater obligation than that which is required under the Federal Rules of Civil Procedure.
21 Apple further objects to the definition of “Communication” to the extent it includes email or other
22 forms of electronic correspondence. Apple will not search for or produce email outside of the
23 procedures set forth in the Parties’ agreed-upon ESI order.

24 5. Apple objects to the definition of “identify” and “locate” as overbroad and unduly
25 burdensome because it requires Apple to identify “each person who presently has custody of the
26 document or thing and of any copy thereof.”

27 6. Apple objects to the definition of “acts of a person” as overbroad and unduly
28 burdensome because it includes “the acts of directors, officers, owners, members, employees,

agents or attorneys acting on the person's behalf."

7. Apple objects to the definition of "Apple Products and Services" as seeking irrelevant information, overbroad, vague, and ambiguous. In responding to these Requests, Apple interprets "Apple Products and Services" to mean "encrypted messaging for use in iMessage, FaceTime, Handoff, Universal Clipboard, iPhone Cellular Call Relay, and iPhone Text Message Forwarding, and mobile VPN in the U.S. market versions of the accused Apple Devices."

8. Apple objects to the definition of "Apple Devices" as seeking irrelevant information, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks information about products that are not accused of infringement and/or do not include encrypted messaging or mobile VPN technologies. In responding to these Requests, Apple interprets "Apple Devices" to mean U.S. market versions of the accused Apple Devices that include encrypted messaging for use in iMessage, FaceTime, Handoff, Universal Clipboard, iPhone Cellular Call Relay, and iPhone Text Message Forwarding, and mobile VPN.

9. Apple objects to Instruction No. 2 to the extent it imposes requirements on Apple beyond those already agreed to by the Parties as stated in Paragraph 8(e) of the Joint Case Management Statement (ECF No. 45).

10. Apple objects to Instruction Nos. 4 and 5 the extent they request Apple to search for and produce electronically stored information, including email, before the parties have negotiated an appropriate ESI order in accordance with the Scheduling Order. Apple will search for and produce such electronically stored information in accordance with the parties' ESI order once agreed to or as otherwise ordered by the Court.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents and things related to Apple's earliest awareness or knowledge of any of the MPH Asserted Patents or any patent application that ultimately issued as any of the MPH Asserted Patents.

1 burdensome, and not proportional to the needs of the case, including, without limitation, in that
2 the scope of the Request is not limited by time or to the United States.

3 Subject to these objections, Apple is willing to meet and confer with MPH regarding the
4 scope of this Request.

5 **REQUEST FOR PRODUCTION NO. 5:**

6 All patent licenses related to each of the Apple Products and Services.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

8 Apple incorporates its Objections to Definitions and Instructions as set forth above.
9 Apple further objects to this Request to the extent that it calls for information that falls within the
10 protection of the attorney-client privilege, the common interest or joint defense privilege, the
11 work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not
12 produce privileged documents responsive to this Request. Apple further objects to this Request to
13 the extent it seeks third party confidential information or seeks information protected from
14 disclosure by third parties' rights of privacy. Apple further objects to this Request as seeking
15 irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the
16 case, including to the extent it requests "[a]ll patent licenses" without limitation to the accused
17 encrypted messaging and mobile VPN technologies. Apple limits its response to this Request to
18 the accused encrypted messaging for use in iMessage, FaceTime, Handoff, Universal Clipboard,
19 iPhone Cellular Call Relay, and iPhone Text Message Forwarding and mobile VPN in the U.S.
20 market versions of the accused Apple Devices. Apple further objects to this Request as seeking
21 irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the
22 case, including, without limitation, in that the scope of the Request is not limited by time or to the
23 United States. Apple further objects to this Request to the extent it seeks information under
24 Patent Local Rule 3-4 before the deadline for such disclosures, which Apple will provide in
25 accordance with the Scheduling Order. To the extent this Request requests anything other than
26 what Apple has agreed to produce, Apple objects that this Request seeks irrelevant information,
27 and is overly broad and unduly burdensome in that it is not relevant nor proportional to the needs
28 of this case.

1 Subject to these objections, Apple will produce non-privileged comparable licenses in
 2 accordance with Patent Local Rule 3-4(c), if any, in its possession, custody, or control that it
 3 locates pursuant to a reasonable and diligent search.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 All patent licenses since 2011 related to virtual private networks.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

7 Apple incorporates its Objections to Definitions and Instructions as set forth above.
 8 Apple further objects to this Request to the extent that it calls for information that falls within the
 9 protection of the attorney-client privilege, the common interest or joint defense privilege, the
 10 work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not
 11 produce privileged documents responsive to this Request. Apple further objects to this Request to
 12 the extent it seeks third party confidential information or seeks information protected from
 13 disclosure by third parties' rights of privacy. Apple further objects to this Request as vague and
 14 ambiguous with respect to "virtual private networks." In responding to this Request, Apple
 15 interprets "virtual private networks" to mean "mobile VPN." Apple further objects to this
 16 Request as seeking irrelevant information, overly broad, unduly burdensome, and not
 17 proportional to the needs of the case, including, without limitation, in that the Request seeks
 18 patent licenses "since 2011." Apple further objects to this Request as overly broad, unduly
 19 burdensome, and not proportional to the needs of the case in that it requests "[a]ll patent
 20 licenses." Apple further objects to this Request to the extent it seeks information under Patent
 21 Local Rule 3-4 before the deadline for such disclosures, which Apple will provide in accordance
 22 with the Scheduling Order. To the extent this Request requests anything other than what Apple
 23 has agreed to produce, Apple objects that this Request seeks irrelevant information, and is overly
 24 broad and unduly burdensome in that it is not relevant nor proportional to the needs of this case.

25 Subject to these objections, Apple will produce non-privileged comparable licenses in
 26 accordance with Patent Local Rule 3-4(c), if any, in its possession, custody, or control that it
 27 locates pursuant to a reasonable and diligent search.
 28

REQUEST FOR PRODUCTION NO. 7:

All patent licenses since 2013 related to secure messaging.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Apple incorporates its Objections to Definitions and Instructions as set forth above.

Apple further objects to this Request to the extent that it calls for information that falls within the protection of the attorney-client privilege, the common interest or joint defense privilege, the work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not produce privileged documents responsive to this Request. Apple further objects to this Request to the extent it seeks third party confidential information or seeks information protected from disclosure by third parties' rights of privacy. Apple further objects to this Request as vague and ambiguous with respect to "secure messaging." In responding to this Request, Apple interprets "secure messaging" to mean "encrypted messaging." Apple further objects to this Request as seeking irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the case, including, without limitation, in that the Request seeks patent licenses "since 2013." Apple further objects to this Request as seeking irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the case in that it requests "[a]ll patent licenses." Apple further objects to this Request to the extent it seeks information under Patent Local Rule 3-4 before the deadline for such disclosures, which Apple will provide in accordance with the Scheduling Order. To the extent this Request requests anything other than what Apple has agreed to produce, Apple objects that this Request seeks irrelevant information, and is overly broad and unduly burdensome in that it is not relevant nor proportional to the needs of this case.

Subject to these objections, Apple will produce non-privileged comparable licenses in accordance with Patent Local Rule 3-4(c), if any, in its possession, custody, or control that it locates pursuant to a reasonable and diligent search.

REQUEST FOR PRODUCTION NO. 8:

All patent licenses or other agreements under which Apple has paid royalties since 2014 for standards and related technology used in the Apple Devices to other companies including

1 without limitation Qualcomm, Nokia, Ericsson, Unwired Planet, Dynamic Advances and
 2 Motorola.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

4 Apple incorporates its Objections to Definitions and Instructions as set forth above.
 5 Apple further objects to this Request to the extent that it calls for information that falls within the
 6 protection of the attorney-client privilege, the common interest or joint defense privilege, the
 7 work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not
 8 produce privileged documents responsive to this Request. Apple further objects to this Request to
 9 the extent it seeks third party confidential information or seeks information protected from
 10 disclosure by third parties' rights of privacy. Apple further objects to this Request as vague and
 11 ambiguous with respect to "other agreements" and "standards and related technology." Apple
 12 further objects to this Request as seeking irrelevant information, overly broad, unduly
 13 burdensome, and not proportional to the needs of the case, including, without limitation, in that
 14 the scope of the Request is not limited to the United States. Apple further objects to this Request
 15 as seeking irrelevant information, overly broad, unduly burdensome, and not proportional to the
 16 needs of the case, including, without limitation, that it requests "[a]ll patent licenses or other
 17 agreements" without limitation to the accused encrypted messaging and mobile VPN
 18 technologies. Apple limits its response to this Request to the accused encrypted messaging for
 19 use in iMessage, FaceTime, Handoff, Universal Clipboard, iPhone Cellular Call Relay, and
 20 iPhone Text Message Forwarding and mobile VPN in the U.S. market versions of the accused
 21 Apple Devices. Apple further objects to this Request as premature under Federal Rules of Civil
 22 Procedure Rule 26(a)(2) and 26(b)(4) to the extent it seeks disclosure of information that is within
 23 the scope of expert testimony or opinion, which Apple will provide in accordance with the
 24 Scheduling Order. Apple further objects to this Request to the extent it seeks information under
 25 Patent Local Rule 3-4 before the deadline for such disclosures, which Apple will provide in
 26 accordance with the Scheduling Order. To the extent this Request requests anything other than
 27 what Apple has agreed to produce, Apple objects that this Request seeks irrelevant information,
 28

1 and is overly broad and unduly burdensome in that it is not relevant nor proportional to the needs
2 of this case.

3 Subject to these objections, Apple will produce non-privileged comparable licenses in
4 accordance with Patent Local Rule 3-4(c), if any, in its possession, custody, or control that it
5 locates pursuant to a reasonable and diligent search.

6 **REQUEST FOR PRODUCTION NO. 9:**

7 All documents and things related to or constituting communications with third parties
8 regarding any of the MPH Asserted Patents, MPH, and/or this lawsuit.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

10 Apple incorporates its Objections to Definitions and Instructions as set forth above.
11 Apple further objects to this Request to the extent that it calls for information that falls within the
12 protection of the attorney-client privilege, the common interest or joint defense privilege, the
13 work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not
14 produce privileged documents responsive to this Request. Apple further objects to this Request
15 as vague and ambiguous with respect to “constituting communications.” Apple further objects to
16 this Request as seeking irrelevant information, broad, unduly burdensome, and not proportional to
17 the needs of the case in that it requests “[a]ll documents and things.” To the extent this Request
18 requests anything other than what Apple has agreed to produce, Apple objects that this Request
19 seeks irrelevant information, and is overly broad and unduly burdensome in that it is not relevant
20 nor proportional to the needs of this case.

21 Subject to these objections, except for communications with counsel, experts or
22 consultants, and other engaged third parties, Apple will produce responsive, non-privileged
23 documents, if any, in its possession, custody, or control that it locates pursuant to a reasonable
24 and diligent search sufficient to show communications with third parties regarding the MPH
25 Asserted Patents, MPH, and this lawsuit.

26 **REQUEST FOR PRODUCTION NO. 10:**

27 All documents and things related to or constituting communications with MPH regarding
28 any of the MPH Asserted Patents, the Apple Products and Services and/or the Apple Devices.

REQUEST FOR PRODUCTION NO. 39:

All patent licenses obtained by Apple for its implementation or provisioning of the Apple Products and Services or granted by Apple for third-party implementation or provisioning of the technologies used in the Apple Products and Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Apple incorporates its Objections to Definitions and Instructions as set forth above.

Apple further objects to this Request to the extent that it calls for information that falls within the protection of the attorney-client privilege, the common interest or joint defense privilege, the work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not produce privileged documents responsive to this Request. Apple further objects to this Request to the extent it seeks third party confidential information or seeks information protected from disclosure by third parties' rights of privacy. Apple further objects to this Request as vague and ambiguous as to "provisioning of." Apple further objects to this Request as seeking irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the case, including, without limitation, in that it requests "[a]ll patent licenses" without limitation to the accused encrypted messaging and mobile VPN technologies. Apple limits its response to this Request to the accused encrypted messaging for use in iMessage, FaceTime, Handoff, Universal Clipboard, iPhone Cellular Call Relay, and iPhone Text Message Forwarding and mobile VPN in the U.S. market versions of the accused Apple Devices. Apple further objects to this Request as seeking irrelevant information, overly broad, unduly burdensome, and not proportional to the needs of the case, including, without limitation, in that the scope of the Request is not limited by time or to the United States. Apple further objects to this Request to the extent it seeks information under Patent Local Rule 3-4 before the deadline for such disclosures, which Apple will provide in accordance with the Scheduling Order. To the extent this Request requests anything other than what Apple has agreed to produce, Apple objects that this Request seeks irrelevant information, and is overly broad and unduly burdensome in that it is not relevant nor proportional to the needs of this case.

1 Subject to these objections, Apple will produce non-privileged comparable licenses in
2 accordance with Patent Local Rule 3-4(c), if any, in its possession, custody, or control that it
3 locates pursuant to a reasonable and diligent search.

4 **REQUEST FOR PRODUCTION NO. 40:**

5 For each of Apple's patent infringement lawsuits during the past ten (10) years involving
6 any of the Apple Products and Services, including those brought against Apple by VirnetX Inc.,
7 deposition transcripts of Apple's employees, officers and experts, trial transcripts, non-
8 infringement and invalidity contentions by Apple, Apple's expert reports, Apple's responses to
9 requests for admission, Apple's responses to interrogatories, Apple's documents referenced in
10 responses to interrogatories.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

12 Apple incorporates its Objections to Definitions and Instructions as set forth above.
13 Apple further objects to this Request to the extent that it calls for information that falls within the
14 protection of the attorney-client privilege, the common interest or joint defense privilege, the
15 work-product doctrine, or any other applicable privilege, doctrine, or immunity. Apple will not
16 produce privileged documents responsive to this Request. Apple further objects to this Request to
17 the extent it seeks information that is publicly available or equally available to MPH. Apple
18 further objects to this Request on the ground and to the extent that it seeks documents not in
19 Apple's possession, custody, or control. Apple further objects to this Request to the extent it
20 seeks third party confidential information or seeks information protected from disclosure by third
21 parties' rights of privacy. Apple further objects to this Request as seeking irrelevant information,
22 overly broad, unduly burdensome, and not proportional to the needs of the case, including,
23 without limitation, in that it requests virtually all documents produced or generated in connection
24 with prior lawsuits without limitation to the accused encrypted messaging and mobile VPN
25 technologies.

26 **REQUEST FOR PRODUCTION NO. 41:**

27 Documents and things sufficient to identify the lead engineer(s)/manager(s) responsible
28 for the design and development of each of the Apple Products and Services.

1 Dated: May 31, 2023

MORRISON & FOERSTER LLP

2
3 By: /s/ Ryan J. Malloy

4 Ryan J. Malloy

5 Attorneys for Defendant
6 APPLE INC.
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CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 707 Wilshire Boulevard, Los Angeles, California 90017-3543. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on May 31, 2023, I served a copy of:

**DEFENDANT APPLE INC.'S OBJECTIONS AND RESPONSES TO
TO PLAINTIFF MPH TECHNOLOGIES OY'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS
(NOS. 1-98)**

☒ **BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b)]** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, this, 31st day of May, 2023.

Silvia Specht
(typed)

/s/ Silvia Specht
(signature)